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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

E.K. WADE,

Plaintiff,

v.

ELAINE CHAO, SECRETARY OF
LABOR, ET AL.

Defendant.

CONSOLIDATED CASE NOS. C-08-
00001 JSW AND C-08-00021

**DECLARATION OF MELISSA K.
BROWN IN SUPPORT OF EX PARTE
MOTION PURSUANT TO FED. R. CIV.
P. 56(f)**

I Melissa K. Brown declare and state as follows:

1. I am employed by the United States Attorney's Office, Northern District of California, as an Assistant United States Attorney. My current employment address is 450 Golden Gate Avenue, Box 36055, San Francisco, California, 94102. I am the attorney assigned to the above-captioned matter.

2. On January 3, 2008, Plaintiff E.K. Wade ("Plaintiff") served the United States Attorney's Office with a Complaint in the above captioned matter case no C-08-00021 JSW. The Complaint is over one- hundred pages long and involves the Secretary of the Department of Labor, Elaine Chao ("Defendant").

3. On March 19, 2008, the Defendant moved to dismiss the Seventh and Eighth causes of action in complaint Case No. C-08-00021 JSW and the entire complaint in Case No. C-08-00001 JSW, these actions have been consolidated. The defendant's motion to dismiss is pending before this Court with a hearing scheduled for May 9, 2008. The Plaintiff opposes the

1 dismissal of the Seventh and Eighth causes of action. Pursuant to Court Order, the Defendant's
2 Reply brief is due on April 11, 2008.

3 4. On April 1, 2008, Plaintiff filed a second Motion for Summary Judgment
4 ("Plaintiff's Second Motion"). The Plaintiff noticed his hearing for May 9, 2008. Pursuant to
5 L.R. 7-3 the Defendant's Opposition to Plaintiff's Second Motion would be due on April 18,
6 2008.

7 5. Based upon my conversation with Andrew Cheng, Assistant United States
8 Attorney for the Northern District of California, I state the following.¹ The Defendant has not
9 waived the right to conduct additional discovery. The Defendant, Elaine Chao Secretary of
10 Labor, as a courtesy, consented to allow jurisdictional discovery to proceed before the initial case
11 management conference in Plaintiff's former action C-06-4725 MJJ, after Plaintiff made a
12 motion to force the Defendant to take his deposition. Accordingly, the Defendant conducted
13 limited jurisdictional discovery with respect to Plaintiff's former action C-06-4725 MJJ.
14 Specifically, the Defendant Secretary of Labor Elaine Chao, took the deposition of Plaintiff.
15 Plaintiff's deposition was not adjourned, but was continued, so the Defendant could inquire into
16 other areas if the case proceeded beyond the motion to dismiss phase. However, that case was
17 dismissed and a the two new actions referenced in the caption were filed. No discovery has been
18 conducted in those actions.

19 Signed this 2nd day of April, 2008, in San Francisco, California.

20 Respectfully submitted,

21 JOSEPH P. RUSSONIELLO
22 United States Attorney

23 s/Melissa Brown

24 Dated: April 2, 2008

25 _____
26 MELISSA K. BROWN
27 Assistant United States Attorney

28 ¹Mr. Cheng handled Plaintiff's former action C-06-4725 MJJ.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**DECLARATION OF MELISSA K. BROWN IN SUPPORT OF EX PARTE MOTION
PURSUANT TO FED. R. CIV. P. 56(f)**

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

- ☒ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ **PERSONAL SERVICE (BY MESSENGER)**
- ☐ **FEDERAL EXPRESS**
- ☐ **FACSIMILE (FAX)** Telephone No.: See Below

to the party(ies) addressed as follows:

E.K. Wade 542 North Civic Drive, Apt. D Walnut Creek, CA 94597		
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 2, 2008 at San Francisco, California.

/s/
MANIK BOWIE
Legal Assistant